

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 6/15/88, see Professional Teaching Practices Commission[640] Ch 7]
[Prior to 5/16/90, see Professional Teaching Practices Commission[287] Ch 7]

The board of educational examiners hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

282—5.1(22,272) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "Board of Educational Examiners".

282—5.3(22,272) Request for access to records.

5.3(1) Location of record. In lieu of the words "(insert agency head)", insert "office where the record is kept". In lieu of the words "(insert agency name and address)", insert "Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147".

5.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "any time from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays".

5.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)", insert "one-half hour". In lieu of the words "(An agency wishing to deal with search fees authorized by law should do so here.)", insert "The agency will give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the particular records in question, and shall indicate the amount of that higher hourly wage to the requester".

282—5.6(22,272) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the office of the executive director of the board".

282—5.9(22,272) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 5.10(22,272) or in the notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of an individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative fiscal bureau under Iowa Code section 2.52.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

282—5.10(22,272) Routine use.

5.10(1) “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

5.10(2) To the extent allowed by law, the following are considered routine uses of all agency records:

a. Disclosure to officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the initiative of the custodian, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals regarding matters in which it performs services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government, as appropriate, to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or to determine whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record is collected or maintained.

282—5.11(272) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(272).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

282—5.12(272) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review the subject’s confidential records as provided in rule 5.6(272). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency when the information is authorized as confidential pursuant to Iowa Code subsection 22.7(18) or other provisions of law.

b. The work product of an attorney or otherwise privileged information.

c. Peace officers’ investigative report, except as required by Iowa Code subsection 22.7(5).

d. Those otherwise authorized by law.

5.12(2) Where a record has multiple subjects with interests in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

282—5.13(272) Availability of records.

5.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids under Iowa Code section 22.3.

b. Tax records made available to the agency under Iowa Code sections 422.20 and 422.72.

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of the board of educational examiners under Iowa Code subsection 21.5(4).

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code paragraph 17A.3(1)“d.”

f. Portions of the agency’s staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, making inspections, settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection,
- (2) Facilitate disregard of requirements imposed by law, or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency under Iowa Code sections 17A.2 and 17A.3.

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P.26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Any other records considered confidential under the law such as agency investigative reports collected to determine if probable cause exists to institute a contested case proceeding pursuant to Iowa Code chapter 272.

5.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(272). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

282—5.14(272) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(272). For each record system, this rule describes the legal authority for the collection of information, the means of storage of information and whether a data processing system matches, collates or permits the comparison of personally identifiable information in one record system with that in another record system. The record systems maintained by the agency are:

5.14(1) Cases dismissed. These records contain data supplied by persons or parties filing complaints and responses with the agency, and contain personally identifiable information such as student name(s), teacher name, administrator name, addresses, disciplinary records, and investigatory reports. This information is collected pursuant to Iowa Code chapter 272 and this chapter, and is stored on paper; most of the data are on an automated data processing system.

5.14(2) Cases decided. These records contain data supplied by persons or parties filing complaints and responses with the agency and contain personally identifiable information such as student name(s), teacher name, administrator name, addresses, disciplinary records, and investigatory reports. This information is collected pursuant to Iowa Code chapter 272 and this chapter and is stored on paper; most of the data are on an automated data processing system.

5.14(3) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

282—5.15(272) *Other groups of records.* This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.2(272). These records are routinely available to the public; however, the agency's files of these records may contain confidential information or information about individuals that is not confidential as discussed in rule 5.13(272). All records are stored both on paper and in automated data processing systems unless otherwise noted.

5.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules or proposing rules or rule amendments. This information is collected pursuant to Iowa Code sections 17A.3, 17A.4, and 17A.7. These records are stored on paper and not in an automated data processing system.

5.15(2) *Board records.* Records contain agendas, minutes, and materials presented to the board. Records concerning closed sessions are exempt from disclosure under Iowa Code subsection 21.5(4). Board records contain information about people who participate in meetings. This information is collected under the authority of Iowa Code section 21.3. Board records are not stored in an automated data processing system.

5.15(3) *Publications.* Publications include brochures, annual reports, video tapes, and other informational materials which describe various agency programs. Agency publications may contain information about individuals, including agency staff or members of the board. This information is not stored in an automated data processing system.

5.15(4) *Statistical reports.* Periodic reports of agency decisions are available from the board. Statistical reports are stored in an automated data processing system.

5.15(5) *Address lists/directories.* The names and mailing addresses of members of boards in other states, professional organizations, public press, and members of the general public evidencing interest in particular events of the agency are maintained in order to provide mailing labels for mass distribution of literature. This information is collected under the provisions of Iowa Code chapter 272.

5.15(6) *Case decisions and declaratory rulings.* All final orders, decisions and rulings are available for public inspection in accordance with Iowa Code section 17A.3. These records may contain personally identifiable information regarding individuals who are the subjects of the appeals or rulings. This information is collected pursuant to Iowa Code chapters 17A and 272 and 282—Chapter 5 and is not stored in an automated data processing system.

5.15(7) *Board budget records.* These records contain data used by the board to develop annual budgets. These records are stored on hard copy and on automated data processing.

282—5.16(272) *Applicability.* This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations to the agency.

These rules are intended to implement Iowa Code section 22.11.

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